# INDEX



## CITATIONS





673595—63

# In the Supreme Court of the United States

OCTOBER TERM, 1962

No. ——

UNITED STATES OF AMERICA

*v.*

DAVID THOMAS HEALY, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA*

## JURISDICTIONAL STATEMENT

### OPINION BELOW

The order of the district court dismissing the indictment (Appendix A, *infra*, pp. 10–11; R. 6) is not reported.

### JURISDICTION

On September 17, 1962, the district court dismissed both counts of the indictment on the ground that they did not charge offenses under 18 U.S.C 1201 and 49 U.S.C. 1472(i) (R. 1–2, 6). A petition for rehearing was denied on November 5, 1962. A notice of appeal to this Court was filed in the district court on December 5, 1962 (R. 12–13). Title 18, Section 3731 of the United States Code confers jurisdiction upon this

Court to review on direct appeal the decision of the district court which dismissed both counts of the indictment on the ground that they did not charge crimes within the meaning of the statutes upon which they were founded.

## QUESTIONS PRESENTED

1. Whether the words "or otherwise" as used in the phrase "held for ransom or reward or otherwise" in the Federal Kidnaping Act (18 U.S.C. 1201) are limited in their application to the holding of a kidnaped person for some pecuniary benefit to the defendants.

2. Whether the statute punishing aircraft piracy (49 U.S.C. 1472(i)), which by its terms covers any "aircraft in flight in air commerce," is limited in its application to commercial airliners engaged in the carriage of goods and persons for hire.

## STATUTES INVOLVED

18 U.S.C. 1201 provides in part as follows:

> (a) Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.
>
> * * * * *

Public Law 87-197, enacted on September 5, 1961, 75 Stat. 466, amended Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472) in part by adding:

AIRCRAFT PIRACY

(i)(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished—

(A) by death if the verdict of the jury shall so recommend, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order; or

(B) by imprisonment for not less than twenty years, if the death penalty is not imposed.

(2) As used in this subsection, the term "aircraft piracy" means any seizure or exercise of control, by force or violence or threat of force or violence and with wrongful intent, of an aircraft in flight in air commerce.

Section 101 of the Federal Aviation Act of 1958, 72 Stat. 737 (49 U.S.C. 1301) provides in part as follows:

SECTION 101. As used in this Act, unless the context otherwise requires—

* * * * * *

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation or aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

* * * * *

STATEMENT

Count 1 of an indictment [1] returned in the United States District Court for the Southern District of Florida charged that on April 13, 1962, the defendants Healy and Oeth did kidnap at gunpoint one Mead, the pilot of a Cessna 172 aircraft, and force him against his will to transport the aircraft from Dade County, Florida, to the Republic of Cuba for the purpose of transporting the defendants to Cuba in violation of 18 U.S.C. 1201 (*supra*, p. 2). Count 2 charged that on the same date said defendants, while passengers in the Cessna, committed aircraft piracy in violation of 49 U.S.C. 1472(i) (*supra*, p. 3) by unlawfully, at gunpoint, forcing the pilot to fly from Dade County, Florida, to the Republic of Cuba while operating within the limits of a federal airway so as directly to affect safety in interstate, overseas and foreign air commerce.

The district court granted a motion to dismiss both counts of the indictment (App. A, *infra*, pp. 10–11). As to Count 1 the court was of the opinion that it did not state an offense under 18 U.S.C. 1201 because of failure to allege that the person kidnaped was held for ransom or reward or otherwise, the Court "construing the word 'otherwise' as contained in the

[1] The two-count indictment (R.1–2) is printed as Appendix B, *infra*, pp. 12–14.

Statute to mean some like wrongful goal of the type such as ransom or reward, that is, of some pecuniary profit to the defendants" (App. A, *infra*, p. 10). The court dismissed Count 2 on the ground that the aircraft alleged to have been pirated was not "an aircraft in flight in air commerce" within the meaning of 49 U.S.C. 1472(i). The court construed this statutory language as being "applicable only to commercial airliners engaged in the carriage of goods and persons for hire" (App. A, *infra*, p. 11).

THE QUESTIONS ARE SUBSTANTIAL

In dismissing the indictment, the district court misconstrued the terms of the statutes upon which the two counts were founded. Its rulings are contrary to the expressed intent of Congress and, in the case of Count 1, contrary to the decision of this Court in *Gooch* v. *United States*, 297 U.S. 124, and the decisions of several courts of appeal.

1. Count 1 of the indictment charged that the kidnaping and transportation "was done for the purpose of transporting the said defendants from Dade County, Florida, in the United States of America, to the Republic of Cuba which was accomplished." The ruling of the district court that the victims were not held for "ransom or reward or otherwise" because the defendants were not seeking pecuniary gain is directly contrary to the decision in *Gooch* v. *United States*, *supra*, where this Court held that the transportation of police officers seized and held to prevent the arrest of their captors was an offense under the Federal Kidnaping Act (formerly 18 U.S.C. 408a,

now 18 U.S.C. 1201). This Court there rejected the very same argument accepted below in the instant case, *i.e.*, that, under the rule of *ejusdem generis*, the statutory words "ransom or reward or otherwise" are limited to some pecuniary consideration or payment of something of value. The Court cited the Senate and House Judiciary Committee reports[2] as showing that the amendment adding the word "otherwise" was intended by Congress to extend jurisdiction of the Act to "persons who have been kidnaped and held, not only for reward, but for any other reason * * *" (297 U.S. at 127, 128). Reasoning that the Act should extend to cases where there was some "expectation of benefit to the transgressor," this Court held that "[i]f the word reward, as commonly understood, is not itself broad enough to include benefits expected to follow the prevention of an arrest, they fall within the broad term, 'otherwise'" (297 U.S. at 128).

Here, the alleged purpose of the kidnaping was to obtain the transportation of the defendants from Florida to Cuba. The pilot was necessary to the purpose. Just as in *Gooch*, this was of benefit to the defendants and therefore within the scope of the Federal Kidnaping Act.[3]

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[2] S. Rep. No. 534, 73d Cong., 2d Sess., March 22, 1934; H. Rep. No. 1457, 73d Cong., 2d Sess., May 3, 1934.

[3] See, also, the following lower federal court decisions, subsequent to *Gooch*, holding that the Act applies to interstate transportation of a kidnaped person held for purposes other than ransom or pecuniary reward: *Brooks* v. *United States*, 199 F 2d 336 (C.A. 4) (flogging of persons kidnaped by Ku Klux Klan members); *United States* v. *McGrady*, 191 F. 2d 829 (C.A. 7) (prisoners forcing kidnaped persons to drive car

2. As to Count 2, there is no question but that the Cessna airplane described in the indictment was an "aircraft" under 49 U.S.C. 1301(5) (*supra*, p. 4). The indictment clearly charged that this aircraft was engaged in "air commerce" as defined in 49 U.S.C. 1301(4) (*supra*, p. 3). It was alleged to have been operated "within the limits of a Federal airway," and so as to "directly affect safety in interstate, overseas and foreign air commerce." Count 2 also alleged that the defendants unlawfully forced the pilot at gunpoint and against his will to fly the aircraft from Dade County, Florida, to the Republic of Cuba, that is, in "interstate, overseas or foreign air commerce" (App. B, *infra*, pp. 13–14). Accordingly, Count 2 properly charged all the elements of an aircraft piracy of an aircraft in flight in air commerce under 49 U.S.C. 1472(i)(2) (*supra*, p. 3).

In dismissing Count 2 on the ground that the words "an aircraft in flight in air commerce" as used in 49 U.S.C. 1472(i) were applicable only to commercial airliners engaged in the carriage of goods and persons for hire (App. A, *infra*, p. 11), the district court imposed an unwarranted limitation upon the statute. There is nothing in its language to support such an interpretation. Furthermore, the legislative history of the Aircraft Piracy Act shows that the term "air commerce" was used designedly because of its broad

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to aid escape); *United States* v. *Bazzell*, 187 F. 2d 878 (C.A. 7), certiorari denied, 342 U.S. 849 (placing victim in house of prostitution); *United States* v. *Parker*, 103 F. 2d 857 (C.A. 3), certiorari denied, 307 U.S. 642 (extortion of confession to enhance reputation of kidnaper as detective).

scope, and that Congress intended the term to apply to private as well as business and commercial planes. Thus, the House Report, No. 958, 87th Cong., 1st Sess., p. 8, which accompanied the bill ultimately enacted, states:

> The term "air commerce" was used designedly in this proposed new subsection [i], and in the proposed new subsections (j) and (k), because of its broad scope. The term is defined in existing law to include not only interstate, overseas, and foreign air commerce and the transportation of mail by aircraft, but also any operation or navigation of aircraft in a Federal airway or any such operation or navigation which directly affects, or may endanger safety in, interstate, overseas, or foreign air commerce.

This same report also states that these subsections would apply in the case of "private aircraft" (*id.* at 15). In the debates on this bill Congressman Harris stated (107 Cong. Rec. 16545):

> The term "air commerce" was used designedly because of its broad scope. * * * Thus, thousands of business and private aircraft, as well as air carrier aircraft, are covered.

To the same effect, see page 56 of the Hearings before the Aviation Subcommittee of the Senate Committee on Commerce on S. 2268, 87th Cong., 1st Sess., August 4, 1961, the corresponding Senate bill.

## CONCLUSION

It is respectfully submitted that, for the foregoing reasons, this Court should note jurisdiction and reverse the judgment below.

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HERBERT J. MILLER, JR.,
*Assistant Attorney General.*
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
*Attorneys.*

FEBRUARY 1963.

# APPENDIX A

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT of FLORIDA, MIAMI DIVISION

No. 287-62-M-Cr-EC

UNITED STATES OF AMERICA

*v.*

DAVID THOMAS HEALY, ALSO KNOWN AS HARROLD MOORE, AND LEONARD MALCOLM OETH, ALSO KNOWN AS JAMES A. EASTHAM

ORDER

THIS CAUSE having come on upon Motion to Dismiss the Indictment filed on behalf of the defendant, David Thomas Healy, and the Court having heard argument of counsel and being fully advised in the premises, it is, thereupon,

ORDERED AND ADJUDGED:

1. That Count One of the Indictment be, and the same is, hereby dismissed, the Court being of the opinion that such count does not state an offense under Title 18, United States Code, Section 1201, in that it fails to allege that Woodruff Mead was kidnapped and held "for ransom or reward or otherwise", the Court construing the word "otherwise" as contained in the Statute to mean some like wrongful goal of the type such as ransom or reward, that is, of some pecuniary profit to the defendants.

2. That Count Two of the Indictment be, and the same is, hereby dismissed, the Court being of the opinion that the aircraft alleged to have been pirated is not "an aircraft in flight in air commerce" as defined in Title 49, United States Code, Section 1472(i), the Court construing the quoted language of the Statute as being applicable only to commercial airliners engaged in the carriage of goods and persons for hire.

3. That the outstanding warrant for the arrest of Leonard Malcolm Oeth upon this Indictment be, and the same is, hereby canceled.

DONE AND ORDERED at Miami, Florida, this 17th day of September 1962.

/s/ EMETT C. CHOATE,
*United States District Judge.*

## APPENDIX B

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

No. 287-62-M-Cr.

18 U.S.C. § 1201 (Life)
49 U.S.C. § 1472(i)
M/S Death—NLT 20 yrs.

UNITED STATES OF AMERICA

*v.*

DAVID THOMAS HEALY, ALSO KNOWN AS HARROLD MOORE, AND LEONARD MALCOLM OETH, ALSO KNOWN AS JAMES A. EASTHAM

INDICTMENT

The Grand Jury charges:

*Count One*

That on or about April 13, 1962, in the Southern District of Florida,

DAVID THOMAS HEALY, also known as Harrold Moore, and
LEONARD MALCOLM OETH, also known as James A. Eastham

did knowingly and unlawfully kidnap, transport and cause to be transported in foreign commerce from Dade County, Florida, in the United States of America, to the Republic of Cuba, a person, to-wit: Woodruff Mead, by forcing him at gunpoint and against his will to fly an airborne aircraft which he was then

piloting, to-wit: a four-passenger Cessna 172, Serial Number 28368, Federal Aviation Agency License N5768A, to the Republic of Cuba, which said kidnapping and transportation was done for the purpose of transporting the said defendants from Dade County, Florida, in the United States of America, to the Republic of Cuba which was accomplished, and after which Woodruff Mead was liberated unharmed from the unlawful custody and control of the said defendants; in violation of Title 18, United States Code, Section 1201.

*Count Two*

That on or about April 13, 1962, in the Southern District of Florida,

DAVID THOMAS HEALY, also known as Harrold Moore, and

LEONARD MALCOLM OETH, also known as James A. Eastham

did commit aircraft piracy in that the said defendants, while passengers therein, did, with wrongful intent, seize an aircraft in flight in air commerce by threat of force and violence and did, with wrongful intent, exercise control of an aircraft in flight in air commerce by threat of force and violence, that is, the said defendants did unlawfully force a pilot, Woodruff Mead, at gunpoint and against his will, to fly an airborne aircraft, to-wit: a four-passenger Cessna 172, Serial Number 28368, Federal Aviation Agency License N5768A, from Dade County, Florida, in the United States of America, to the Republic of Cuba, which said aircraft Woodruff Mead was piloting and operating within the limits of a Federal airway at the time it was unlawfully seized by the said defendants and at times thereafter, while under

the unlawful control of the said defendants imposed through threat of force and violence, and which said aircraft Woodruff Mead was, at all times pertinent, piloting and operating so as to directly affect safety in interstate, overseas and foreign air commerce, while under the unlawful control of the said defendants imposed through threat of force and violence; all in violation of Title 49, United States Code, Section 1472(i).

A True Bill,

s/ HARRY P. CAIN,
*Foreman.*

EDWARD F. BOARDMAN,
*United States Attorney.*

By: s/ Edmond J. Gong,
EDMOND J. GONG,
*Assistant United States Attorney.*

U.S. GOVERNMENT PRINTING OFFICE: 1963